

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SWINOMISH INDIAN TRIBAL
COMMUNITY, a federally recognized Indian
Tribe,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware
corporation,

Defendant.

NO. 2:15-cv-00543-RSL

STIPULATED MOTION AND ORDER
REGARDING EXPERT DISCOVERY,
SUMMARY JUDGMENT BRIEFING
SCHEDULE, AND DAMAGES TRIAL

Pursuant to Fed. R. Civ. P. 16(b)(4), the Parties file this Stipulated Motion Regarding Expert Discovery Summary Judgment Briefing Schedule, and Damages Trial, and state as follows:

A. The Parties Stipulate to Extend Expert Discovery to April 22, 2021

1. The parties exchanged expert disclosures on February 1, 2021 and rebuttal expert disclosures on March 15, 2021. The Tribe disclosed three experts and one rebuttal expert and BNSF disclosed two experts and four rebuttal experts (one of which was a previously

disclosed expert). The Tribe intends to take depositions of four of BNSF's five experts. BNSF intends to take the depositions of all four of the Tribe's disclosed experts.

2. The operative scheduling order provides that expert discovery must be completed by April 15, 2021. (Dkt. 120).

3. Due to the number of experts involved, in order to accommodate the scheduling of the Parties' counsel and eight experts, the Parties stipulate that the deadline to complete expert discovery should be extended to April 22, 2021.

4. Pursuant to the Court's operative scheduling order, this will also extend the deadline for the parties to file any motions related to expert discovery. No other deadlines are affected by this stipulation.

B. The Parties Stipulate to Modify the Briefing Protocol for Rule 56 Motions

5. After discussion, the Parties anticipate that the topics on which they will seek summary judgment have substantial overlap regarding the interpretation and effect of the Easement.

6. In order to avoid duplication of effort and to reduce the burden on the Court that will result if the Parties file simultaneous cross-motions on the same issues, the Parties stipulate

1 to a staggered, modified briefing schedule where each party will file two, 30-page briefs as
 2 follows:

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4	Tribe's Motion for Summary Judgment	April 9, 2021
5	BNSF's Response and Cross-Motion	April 29, 2021
6	Tribe's Response/Reply	May 14, 2021
7	BNSF's Reply	May 28, 2021

8 This briefing schedule will not extend the noting date.

9 **C. Setting Second Phase Trial**

10 7. This case has been bifurcated into two trial phases: the liability phase, to be tried
 11 in August 2021 and a subsequent damages phase, which has not been set.

12 8. The Parties have not yet engaged in any damages discovery, which would need
 13 to be accomplished following the August 2021 trial.

14 9. Further, in December 2020, BNSF sent a formal letter to the Tribe requesting
 15 consent to an increase in rail traffic over the Easement for the year 2021. On February 16,
 16 2021, the Swinomish Senate held a special meeting to consider the request. The Senate voted to
 17 deny consent. Formal notice of the Tribe's response was sent to BNSF's counsel on March 4,
 18 2021. BNSF intends to bring claims related to this request and denial, as may be appropriate
 19 following the Court's rulings on the claims pending for trial in August. The Parties agree that in
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1 addition to damages discovery, BNSF may conduct discovery regarding the Senate's February
2 2021 decision in the second-phase trial.

3 10. The Parties therefore request that the Court set a status conference to discuss
4 scheduling of the second phase trial and accompanying scheduling order.

5 DATED this 19th day of April, 2021.

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PURSUANT TO STIPULATION, THE COURT ORDERS that the expert discovery deadline is extended to April 22, 2021. The Court further ORDERS that the Parties shall file staggered cross-motions for summary judgment under a four-brief schedule:

Plaintiff's Motion for Summary Judgment	April 9, 2021
BNSF's Response/Cross-Motion	April 29, 2021
Tribe's Response/Reply	May 14, 2021
BNSF's Reply	May 28, 2021

Each brief shall be limited to 30 pages. All other deadlines set forth in the May 11, 2020 Amended Order Setting Trial Date & Related Dates shall remain unchanged.

Issues related to phase 2 discovery and scheduling will be discussed, if necessary, at the close of the liability trial.

Dated this 19th day of April, 2021.



Robert S. Lasnik
United States District Court Judge